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July 9, 1997

BY HAND DELIVERY

Mr. William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

Re: In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142

Dear Mr. Caton:

Please find enclosed for filing the original and four copies of Comments of BellSouth Corporation in the matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97-142.

Also enclosed are a computer diskette containing this document in WordPerfect 5.1 format and an extra copy to be date-stamped and returned.

Sincerely,

Michael K. Kellogg

Michael K. Kellogg

Enclosures

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OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market	IB Docket No. 97-142

To: The Commission

COMMENTS OF BELLSOUTH CORPORATION

This Commission has asked whether the public would benefit from opening U.S. telecommunications markets to foreign carriers who may be losing monopoly status in their home countries. BellSouth agrees with the Commission's tentative conclusion that the public would benefit from an "open entry" policy in U.S. markets. But if that is true of entry for these foreign-affiliated carriers, then it certainly is true of entry by American carriers. If the Commission opens U.S. markets to the foreign companies, there can be no legitimate policy basis for excluding BellSouth and the other Bell companies from competing as well. Not only are the Bell companies domestic carriers, but their local markets are more open than the foreign carriers', and the safeguards attached to their entry are more extensive than the ones proposed by the Commission for foreign entry.

DISCUSSION

The Commission frames its goal as "increas[ing] competition in the U.S. market for basic telecommunications services while minimizing the risk of anticompetitive harm." Order and Notice of Proposed Rulemaking ¶ 158 (rel. June 4, 1997) ("NPRM"). With that objective in

mind, the Commission reaches the preliminary conclusion that a presumption of openness should attach where the carrier seeking access to U.S. markets is from a World Trade Organization ("WTO") member country, because about half of these countries (and most of the larger ones) "have made commitments to open their basic telecommunications markets" and to regulate those markets in a reasonable and impartial way. Id. ¶¶ 22, 35. The Commission indicates that these commitments — whether or not accompanied by actual competition — "should provide a meaningful check on [incumbent foreign carriers'] exercise of market power," and that any remaining danger of monopoly abuses generally can be addressed by competitive safeguards. Id. ¶ 31. Indeed, given the availability of regulatory safeguards against anticompetitive behavior, the Commission is prepared to extend its presumption in favor of open entry even to carriers whose governments "have made no, poor, or unfulfilled commitments towards opening their markets to effective competition." Id. ¶¶ 35-38, 47.

1. The Commission draws parallels between foreign entry into U.S. markets and Bell company entry into in-region, interLATA services. See, e.g., ¶¶ 9, 81, 82 n.78. The Commission likens its approach to that established by Congress in section 271 of the Communications Act, concerning Bell company entry into in-region interLATA services. Id. ¶ 9. This analogy is apt, to a degree: Like the Commission's proposed approach to foreign entry, section 271 effectively sets up a presumption that in-region interLATA entry is appropriate when the Bell companies' local markets are open to competition. But as the Commission has misinterpreted section 271, the similarity ends there.

In the NPRM, the Commission correctly explains that section 271 allows the Bell companies "to enter the long distance market if they satisfy detailed statutory and regulatory

safeguards designed to ensure that incumbent local exchange carriers are unable to leverage their power in the local market to the detriment of the interexchange competitors." Id. ¶ 9. Yet that is not how the Commission has applied section 271 in practice. In its Memorandum Opinion and Order, Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, FCC 97-228, CC Dkt. No. 97-121 (rel. June 26, 1997) ("Oklahoma Application"), the Commission refused even to consider whether SBC had satisfied all requirements of section 271(c)(2)'s "competitive checklist." Its reason was that potential facilities-based competitors had (in a sign that markets are open) requested interconnection and access to SBC's network, but had not yet begun to provide facilities-based service. Id. ¶¶ 60-65. In direct conflict with the NPRM in this docket, the Commission there suggested that the openness of local markets is not established by the absence of legal entry barriers and the existence of multiple competitors who are licensed to enter the market, but must be shown through new competitors' decisions actually to provide facilities-based service to business and residential customers. Compare NPRM ¶ 104 ("sufficient competition" exists to refrain from supplemental regulation where legal barriers to entry have been eliminated and multiple facilities-based carriers are authorized to compete) with Oklahoma Application ¶ 42 (claiming that "Congress regarded the presence of one or more [facilities-based,] operational competitors in a BOC's service area as the most reliable evidence that the BOC's local markets are, in fact, open to competitive entry.").

It would be irrational for the Commission to adopt a formal presumption in favor of foreign entry into U.S. markets based on the likelihood that foreign carriers' home markets are technically open, while continuing to deny the Bell companies a chance to enter the domestic

interexchange market even when they show their local markets are in fact open. This is especially so given that Congress and this Commission already have guaranteed that the local exchange in this country is far more open than the home markets of those carriers that will benefit from the Commission's proposed new rule, and given that the Commission and the Department of Justice have recognized the Bell companies will bring additional competition that is in the public interest.[1]

Consider, for example, the British market — home to (among other carriers) British Telecommunications ("BT"), which is seeking to take over MCI. Even among WTO member nations, Britain is a leader in opening its domestic markets to competition. Yet BT is under no obligation to provide its retail services to resellers. It need only interconnect with certified facilities-based carriers known as "Relevant Connectable Systems."[2] By contrast, the 1996 Act requires each BOC to sell its local services to resellers at wholesale rates, thereby ensuring that carriers without their own facilities can compete. 47 U.S.C. § 251(b)(1), (c)(4).

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[1] See, e.g., Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Dkt. No. 96-149, FCC 96-940 at ¶ 6 & n. 13 (rel. July 18, 1996) (identifying bundled offerings as a specific public benefit of BOC in-region interLATA entry under section 271); Separate Statement of Chairman Reed E. Hundt at 1 ("entry into the long distance market by [Southwestern Bell] or a carrier with similar assets would promote competition and benefit consumers"), appended to Oklahoma Application; Evaluation of the United States Department of Justice at 3-4, CC Dkt. No. 97-121 (filed May 16, 1997) ("InterLATA markets remain highly concentrated and imperfectly competitive, . . . and it is reasonable to conclude that additional entry, particularly by firms with the competitive assets of the BOCs, is likely to provide additional competitive benefits.").

[2] See Statement Issued by the Director General of Telecommunications, OFTEL's Policy on Indirect Access, Equal Access and Direct Connection to the Access Network Annex A ¶ 1 (July 1996) < http://www.oftel.gov.uk> ("OFTEL Statement").

BT also is not obligated to provide unbundled access to elements of its network. The U.K. Office of Telecommunications recently rejected a proposal for "direct connection" that would have "allow[ed] other operators to take over the exchange line at some convenient point." OFTEL Statement at ¶ 41, even though it recognized that the proposal would have "open[ed] up a number of opportunities for operators to compete with BT without the substantial investment needed to lay individual connections and without undue risk to the new operator." Id. This is a far cry from the situation in the United States, where each incumbent LEC must offer both interconnection "at any technically feasible point" and access to unbundled network elements. 47 U.S.C. § 251(c)(2), (3), as well as provide collocation to allow the most efficient combined use of the incumbent's and competitor's facilities. Id. § 251(c)(6). Furthermore, a customer who chooses to use the services of one of BT's competitors must dial an access code that adds an extra four digits. OFTEL Statement ¶¶ 9, 23, 36-37. The 1996 Act, by contrast, requires the Bell companies to provide both local and intraLATA dialing parity to obtain interLATA authority. Id. §§ 251(b)(3), 271(e)(2).

Regulatory protections against leveraging of incumbency likewise are more extensive in this country than in the U.K. For instance, price cap regulation does not currently apply to interconnection in the United Kingdom. BT's interconnection (i.e., access) charges are set under a form of traditional rate-of-return regulation, so that they "cover [BT's] fully allocated costs of conveyance, including a full contribution to relevant overheads and a return on capital employed." BT Form 20-F at 12, 17 (SEC filed Jul. 5, 1996). Moreover, whereas the Commission takes no position on the structural separation requirements that would apply to BT's

entry into U.S. international markets, NPRM ¶¶ 111-113, the 1996 Act establishes strict structural separation requirements for the Bell companies, 47 U.S.C. § 272.

If safeguards and the possibility of sanctions are presumptively sufficient to address exercises of market power by foreign carriers that do not yet face actual competition in their home markets, and whose home markets may not be nearly as open to competitors as U.S. local markets, then there can be no legitimate basis for presuming them insufficient to ensure that Bell company in-region, interLATA entry serves the public interest. The Commission should be doing everything in its power to speed such entry by the Bell companies. Certainly, it should not be stretching to construe section 271 in a way that slows it.

2. The Commission also states its general goal "to make streamlined procedures available to the maximum number of applicants possible, consistent with ensuring that our competitive concerns are addressed." NPRM ¶ 130. BellSouth fully endorses this policy and believes it is an important part of opening markets under the Telecommunication Act of 1996 as well as international agreements. In particular, BellSouth believes the streamlined procedures established in the Commission's recent Streamlining Order are working well and can be expanded.[3] This would include streamlining where the applicant makes the certifications suggested in the NPRM concerning compliance with dominant carrier regulation and the openness of its home markets. NPRM ¶¶ 135-136. But again, if the Commission allows foreign carriers (and U.S. consumers) the benefits of streamlined application procedures on the basis that traditional monopoly markets are open to competition and regulatory safeguards are in place, see

[3] Report and Order, Streamlining the Int'l Section 214 Authorization Process and Tariff Requirements, 11 FCC Rcd 12,884 (1996).

id. ¶ 136, there could be no basis for denying the Bell companies similar relief in light of the 1996 Act. New section 253 of the Communications Act has eliminated legal barriers to entering the Bell companies' local exchange markets; competitors have been licensed to offer competing services in BellSouth's nine states and across the country; and safeguards concerning local and interLATA operations by the Bell companies are in place. Under these circumstances, the logic of the NPRM correctly suggests that streamlined procedures are appropriate.

CONCLUSION

Inexplicably, the Commission appears more anxious to welcome foreign carriers into U.S. markets than to allow full competition by the home-grown Bell companies. While BellSouth does not oppose foreign-carrier entry on comparable terms and conditions to domestic carriers, it does oppose the Commission's apparent use of a bizarre double-standard when determining when fuller competition is in the public interest. Twisting the principle that foreign companies should not be treated less favorably than domestic companies, the Commission proposes to allow entry by major foreign carriers such as BT, Deutsche Telekom, and France Telecom into U.S. markets while preventing entry by the Bell companies.

The Bell companies' local markets are legally open. Economic barriers to entry have been lowered. Appropriate safeguards governing new Bell company business are in place. There can be no basis for leaving these domestic competitors out of the open-market policy that the Commission is espousing as to foreign carriers.

Respectfully submitted,

Michael K. Kellogg
Bmm

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July 9, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 1997, I caused copies of the Comments of BellSouth Corporation in the matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market to be served upon the parties listed below by first-class mail, postage prepaid.

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